

# NEXSEN | PRUET

June 16, 2008

**Burnet R. Maybank, III**  
Member  
Admitted in SC

## VIA ELECTRONIC FILING

Public Service Commission  
Docketing Department  
P.O. Drawer 11649  
101 Executive Center Drive  
Columbia, South Carolina 29211

Re: Agreement between Bell South Telecommunications, Incorporated d/b/a  
AT&T South Carolina, Alltel Communications, Incorporated and Alltel  
Holding Corporate Services Incorporated - Docket Number 2000-130-C

Dear Ladies and Gentlemen:

In connection with the above-referenced matter, enclosed for filing please find Alltel's proposed Order Approving Second Amendment and Denying AT&T's Motion to Withdraw. Also enclosed please find a docket cover sheet.

By copy of this letter, I am serving all parties of record with a copy of this Alltel Order as indicated on the attached Certificate of Service.

Very truly yours,



Burnet R. Maybank, III  
Enclosures  
BRM/sjn

cc: Nanette S. Edwards, Esq.  
All Parties of Record

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**Attorneys and Counselors at Law**

STATE OF SOUTH CAROLINA

(Caption of Case)

AGREEMENT BETWEEN BELL SOUTH  
TELECOMMUNICATIONS, INCORPORATED D/  
B/A AT&T SOUTH CAROLINA, ALLTEL  
COMMUNICATIONS, INCORPORATED AND  
ALLTEL HOLDING CORPORATE SERVICES,  
INCORPORATED

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COVER SHEET

DOCKET  
NUMBER: 2000 - 130 - C

(Please type or print)

Submitted by: Burnett R. Maybank III

SC Bar Number: 3699

Telephone: 803-771-8900

Fax: 803-253-8277

Other: \_\_\_\_\_

Address: Nexsen Pruet, LLC

1230 Main Street, Suite 700

Columbia, SC 29201

Email: bmaybank@nexsenpruet.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☒ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: \_\_\_\_\_

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input checked="" type="checkbox"/> Proposed Order	<input checked="" type="checkbox"/> Other: <u>Cover Sheet</u>
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

Print Form

Reset Form

**Docket Number 2000-130-C**

**Agreement between Bell South Telecommunications, Incorporated d/b/a AT&T  
South Carolina, Alltel Communications, Incorporated and  
Alltel Holding Corporate Services Incorporated**

**Alltel Order Approving Second Amendment and Denying AT&T's Motion to  
Withdraw**

\*\*\*\*\*

**CERTIFICATE OF SERVICE**

I, Shirley J. Neal, hereby certify that on this 16th day of June, 2008, a copy of **Order Approving Second Amendment and Denying AT&T's Motion to Withdraw** (referenced above) was placed in the United States mail, via first class, postage prepaid to:

Florence P. Belser, Esq.  
Office of Regulatory  
Post Office Box 11263  
Columbia, SC 29211  
Email: [fbelser@regstaff.sc.gov](mailto:fbelser@regstaff.sc.gov)

Patrick W. Turner, Esq.  
BellSouth Telecommunications, Inc. d/b/a  
AT&T South Carolina d/b/a AT&T Southeast  
P.O. Box 752  
Columbia, SC, 29202  
Email: [pt1285@att.com](mailto:pt1285@att.com)

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

Docket No. 2000-130-C

<b>In Re:</b>	)	
	)	
AGREEMENT BETWEEN BELLSOUTH	)	
TELECOMMUNICATIONS, INCORPORATED	)	ORDER APPROVING SECOND
D/B/A AT&T SOUTH CAROLINA, ALLTEL	)	AMENDMENT AND DENYING AT&T
COMMUNICATIONS, INCORPORATED AND	)	MOTION TO WITHDRAW
ALLTEL HOLDING CORPORATE SERVICES,	)	
INCORPORATED	)	
	)	

This matter comes before the Public Service commission of South Carolina (the “Commission”) on the following: (a.) the joint letter of AT&T of South Carolina (“AT&T”) and Alltel Communications, Inc. (now, Alltel Communications, LLC) (“Alltel”) dated February 28, 2008 that submitted for approval pursuant to Section 252 of the Telecommunications Act of 1996 ( the “Act”) the Second Amendment, dated November 2007, to the interconnection agreement between the parties that was effective as of August 29, 2004 (the “Interconnection Agreement”); (b) the Emergency Motion for order Acknowledging Withdrawal of Amendment to Interconnection Agreement filed by AT&T on or about April 24, 2008 (the “ AT&T Motion “) and (c) the Alltel Response in Opposition of AT&T Motion (“Alltel Response”) in which Alltel seeks approval of the Second Amendment.

**PROCEDURAL HISTORY**

By order dated May 8, 2008 the Commission appointed Joseph M. Melchers as hearing officer in this matter. On May 15, 2008 the parties filed a joint procedural

motion asking the Commission schedule the matter for oral argument and thereafter decide the matter on the basis of the filed record. By order dated May 28, 2008, the hearing officer granted the joint procedural motion. Oral argument was held on June 10, 2008 beginning at 10:30 A.M. AT&T was represented by Mr. Patrick W. Turner. Alltel was represented by Mr. Robert Coble of the firm of Nexsen Pruet and by Mr. Stephen Rowell, in house attorney for Alltel. The office of Regulatory Staff was represented by Ms. Shealy Boland Reibold. The Commission asked the parties to submit proposed orders by June 16, 2008.

The Commission having heard the arguments of all parties, carefully reviewed the record herein and examined the applicable law, the Commission sets forth its findings in this order.

#### APPLICABLE LAW

Sections 251 and 252 of the Act and applicable sections of the Federal Communications Commission's ("FCC") rules pursuant to the Act provide that parties may negotiate, or failing such, arbitrate the terms of an interconnection agreement for direct or indirect interconnection. The Act also provides that upon negotiation, the parties must submit any negotiated agreement to the state commission for approval and thereafter the incumbent local exchange carrier must make that same agreement available to other carriers that request it.

The FCC order approving the merger of AT&T and BellSouth Telecommunications, Inc. approved certain commitments by AT&T that are intended to reduce the costs associated with the negotiation and approval of interconnection agreements (the "Merger Commitments") *In re AT&T, Inc. and BellSouth Corp.*

*Application for Transfer of Control*, 22 FCC Rcd 5662, ¶ 22, Appendix F at 5809 (2007) (the “Merger Order”). The Merger Commitments are intended to reduce transaction costs associated with interconnection agreements by requiring AT&T to make available to any requesting carrier any entire effective interconnection agreement that AT&T entered into in any state in the AT&T 22 state territory. Additionally, AT&T may not refuse a request by a carrier to opt into an agreement. Further, AT&T must allow a requesting carrier to use its preexisting agreement as the starting point of negotiating a new agreement. Finally, AT&T must permit a requesting carrier to extend its current agreement regardless of whether its initial term has expired. During the extension, the agreement may be terminated only at the carrier’s request unless terminated pursuant to the agreement’s default provision. The Merger Order also specifies that it is not the intent of the commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Act or over the matters addressed in the commitments.

#### POSITIONS OF THE PARTIES

AT&T argued that at the time it signed the Second Amendment, it believed that Alltel remained a certificated CLEC in South Carolina. It contends that after submitting the Second Amendment for approval by the Commission, it learned only then that Alltel was no longer conducting CLEC operations and holding a certificate. AT&T contends that Section 9.2 of the Interconnection Agreement required Alltel to provide it notice of such a change. AT&T contends that Alltel made inaccurate statements to AT&T and failed to comply with contractual notice obligations. AT&T also argued that the Interconnection Agreement’s bill and keep provision was dependant on the balance of traffic created by both CMRS and CLEC operations. AT&T also contends that the

interpretation and enforcement of the Merger Commitments rests exclusively with the FCC and not the state commissions.

Alltel responded that AT&T had actual knowledge of its transfer of its CLEC operations and some of its CLEC certificates. Alltel explained that applications had been filed in many state commissions disclosing and seeking permission for the CLEC operations transfer and further that because the CLEC business collocated in AT&T offices, purchased numerous circuits from AT&T, resold AT&T lines and purchased AT&T UNEs, that AT&T was involved in the transition of the CLEC operations to Windstream and can not logically claim lack of knowledge or notice. It was also pointed out that with respect to South Carolina the Alltel CLEC authorization transferred to Windstream Communications in July 2006 and that such was reflected in the Commission's publicly available order earlier that year. Alltel also pointed out that the April 24, 2007 email from AT&T witness Randy Ham included in its filing, expressly referred to the transfer of CLEC operations and some CLEC certificates. Alltel pointed out that Mr. Ham was indicating at that time in 2007, that it was AT&T's position that because Alltel discontinued its CLEC operations and transferred some authorizations it no longer should operate under the Interconnection Agreement and a new agreement was appropriate. However, Alltel showed that the later correspondence of April 17, 2007 from AT&T reversed this position and merely demanded CLEC certification to extend the Interconnection Agreement per the Merger Commitments. Alltel explained that it did not provide AT&T any proof of CLEC authority and yet AT&T executed the Second Amendment to extend the Interconnection Agreement. Alltel argued that AT&T waived

any objection at that time by knowing it had transferred its CLEC operations and yet executed the Second Amendment extending the Interconnection Agreement.

Alltel also explained that it recently offered to reinstate the CLEC authorizations to cure AT&T's objections and yet AT&T refused that offer and has again reversed course to argue that both authorization and operations must be present. Alltel argued that AT&T is merely changing the demand in an attempt to avoid supporting the Second Amendment extension of the Interconnection Agreement and thereby avoid its Merger Commitments and contractual obligations under the Interconnection Agreement.

Alltel also takes the position that although AT&T had actual knowledge of its lack of CLEC authorization and operations when AT&T offered and signed the Second Amendment, whether it now has CLEC operations and authorization is irrelevant because Alltel is still entitled to continue under the Interconnection Agreement without CLEC operations. Alltel explained that Nextel has been determined by at least four state commissions to be entitled to opt into the Sprint interconnection agreement, which like the Alltel Interconnection Agreement addresses both CMRS and CLEC traffic, even though Nextel has no CLEC operations. Alltel referred the Commission to Tennessee Regulatory Authority dockets 07-00161 and 07-00162, Public Utility Commission of Ohio Case Number 07-1136 TP.CSS, Georgia Public Service Commission Docket 25430 and Kentucky Public Service Commission Docket 2007-00255. Alltel argued that like these other states, South Carolina should acknowledge that CLEC operations and authorizations are not required in order to exchange CMRS traffic under an agreement like the Interconnection Agreement.

Further, Alltel argued that the Merger Commitments require AT&T to agree to the Second Amendment extension of the Interconnection Agreement and that AT&T has not shown default under such agreement that might allow it to terminate the Interconnection Agreement. Alltel argued that the above referenced other states, like South Carolina, were faced with interpretation and application of the Merger Commitments and have concluded that such is their responsibility under the Act and the Merger Order.

### FINDINGS AND CONCLUSIONS

The Commission finds as demonstrated by Alltel that its transfer of its CLEC authorizations and operations were not misrepresented to AT&T. Alltel's actions were open and quite transparent in its transfer of CLEC operations to Windstream and it appears that AT&T had actual notice and involvement in that process. AT&T has not established that Alltel misrepresented the transfer of its CLEC operations and authorizations. While AT&T may now regret executing the Second Amendment, it did so knowing the facts regarding Alltel transferring its CLEC operations and can not now rescind that agreement. It appears AT&T waived any objection that may have been available at that time.

Regardless of the above, however, this Commission is convinced by the logic of the referenced other state commission decisions in the Nextel adoption requests and agrees that Alltel can continue to operate under the terms of the Interconnection Agreement even though it may not be able to use all features of that agreement because it is not a CLEC. AT&T has not shown that lack of CLEC operations renders the remainder of the Interconnection Agreement invalid.

Further, the Commission finds and concludes that the Merger Commitments expressly allow and contemplate extension of agreements just like that contemplated by the Second Amendment. AT&T has not shown a default that entitled it to terminate the Interconnection Agreement and therefore regardless of whether it knew of the CLEC transfer or when it knew of such, the Second Amendment is one of the means of lowering transaction costs contemplated and provided for by the Merger Order. This Commission is also not convinced that only the FCC was intended to review and approve such extensions or disputes related to such.

IT IS THEREFORE ORDERED THAT:

- A. The Second Amendment should be and is approved.
- B. The AT&T Motion is denied.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

\_\_\_\_\_  
G. O'Neal Hamilton, Chairman

ATTEST:

\_\_\_\_\_  
C. Robert Moseley, Vice-Chairman

ORDER APPROVING SECOND AMENDMENT AND DENYING AT&T MOTION  
TO WITHDRAW

This matter comes before the Public Service commission of South Carolina (the "Commission") on the following: (a.) the joint letter of AT&T of South Carolina ("AT&T") and Alltel Communications, Inc. (now, Alltel Communications, LLC) ("Alltel") dated February 28, 2008 that submitted for approval pursuant to Section 252 of the Telecommunications Act of 1996 ( the "Act") the Second Amendment, dated November 2007, to the interconnection agreement between the parties that was effective as of August 29, 2004 (the "Interconnection Agreement"); (b) the Emergency Motion for order Acknowledging Withdrawal of Amendment to Interconnection Agreement filed by AT&T on or about April 24, 2008 (the " AT&T Motion ") and (c) the Alltel Response in Opposition of AT&T Motion ("Alltel Response") in which Alltel seeks approval of the Second Amendment.

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*Shealy Boland Reibald*  


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IT IS THEREFORE ORDERED THAT:

A. The Second Amendment should be and is approved.

B. The AT&T Motion is denied.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

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G. O'Neal Hamilton, Chairman

ATTEST:

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C. Robert Moseley, Vice-Chairman